IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

OP.No. 29233 of 2001(S)

OA.1248/1998 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONERS:
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1. **UNION OF INDIA, REP. BY SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF RAILWAYS, RAIL BHAVAN, NEW DELHI.**

2. **THE CHIEF PROJECT MANAGER, RAILWAY ELECTRIFICATION, SOUTHERN RAILWAY, EGMORE, CHENNAI – 8.**

BY ADV. SRI.M.C.CHERIAN, SC, RAILWAYS
SRI.K.V.SADANANDA PRABHU,SR.SC.RAILWAYS
SRI.JAMES KURIAN, SC, RAILWAYS

RESPONDENT:

S.MARIA JAYSINGH,
PERMANENT WAY MISTRY,
OFFICE OF THE DY.CHIEF ELECTRICAL ENGINEER,
RAILWAY ELECTRIFICATION, INDIAN RAILWAYS,
TRICHUR.

BY ADV. SRI.T.C.GOVINDA SWAMY
SRI.K.M.ANTHRU
SRI.MARTIN G.THOTTAN
SRI.MANNATTIL KUMAR

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 23/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

ORDER ON C.M.P.NO.47533/2001 IN O.P.NO.29233/2001 S

DISMISSED

23/10/2007 **SD/- K.BALAKRISHNAN NAIR, JUDGE**

SD/- T.R.RAMACHANDRAN NAIR, JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE AVENUE CHART OF PERMANENT WAY INSPECTORS ETC.**

EXT.P2: **COPY OF ORDER DTD. 13/04/1994 OF 2ND PETITIONER.**

EXT.P3: **COPY OF ORDER DTD. 23/08/1985 OF RAILWAY BOARD.**

EXT.P4: **COPY OF ORDER DTD. 1/04/98 OF 2ND PETITIONER TO RESPONDENT.**

EXT.P5: **COPY OF REPRESENTATION DTD. 30/05/1998 OF RESPONDENT.**

EXT.P6: **COPY OF ORDER DTD. 13/08/1998 SENT TO RESPONDENT.**

EXT.P7: **COPY OF O.A.NO.1248/98 (WITHOUT ANNEXURES) FILED BY RESPONDENT, BEFORE CAT.**

EXT.P8: **COPY OF REPLY STATEMENT OF PETITIONERS, IN O.A.1248/1998.**

EXT.P9: **COPY OF ORDER DTD. 4/04/2001 OF CAT IN O.A.1248/1998.**

EXT..P10: **COPY OF THE TEXT OF RULE 216(A) OF RAILWAY ESTABLISHMENT MANUAL (VOL.I).**

/TRUE COPY/

P.A.TO JUDGE

KSS

K.BALAKRISHNAN NAIR & T.R.RAMACHANDRAN NAIR, JJ.

OP No.29233 of 2001-S

Judgment

Balakrishnan Nair, J.

The petitioners are the respondents in OA No.1248/98. A copy of the said OA is produced as Ext.P7. The respondent herein was the applicant in the OA. The brief facts of the case are the following :

2. The respondent applicant was engaged by the Railways as Casual Labourer with effect from 1977. He was granted temporary status with effect from 01.01.1982. He was regularised in the post of Khalasi w.e.f. 06.07.1989. Later, he was transferred to the Electrification Organisation on 06.05.1991. While so, he was promoted on ad hoc basis as Permanent Way Mistry on 13.01.1992 in the scale of pay of Rs.1400-2300. After six months, he was reverted from the said post on 13.07.1992. Still later, he was again promoted as Permanent Way Mistry on ad hoc basis by order dated 19.06.1992 w.e.f. 17.12.1992. The said appointment was extended by Ext.P2 order dated 13.04.1994. The said order stipulated that the promotion will remain in force until the work is completed or a regular Permanent Way Mistry is posted in his

place or till such time, the post is available. Later, the petitioner was reverted by Ext.P4 order dated 01.04.1998, relying on the rule that an ad hoc employee cannot be given further ad hoc promotion. That means, an employee cannot be promoted twice on ad hoc basis. The petitioner filed a representation against the said reversion, which is produced as Ext.P5. The CAT directed the competent authority to consider his representation. The said representation was considered and rejected by Ext.P6 order dated 13.08.1998. OA No.1248/98 was filed, challenging Exts.P4 and P6. The said OA filed by the respondent herein, was allowed by Ext.P9 order dated 04.04.2001. The CAT held that the petitioner has been granted only one promotion. Of course, there is a post of Worksmate between the post of Permanent Way Mistry and Khalasi. But, there is no rule or order, which stands in the way of promoting a Khalasi to the post of Permanent Way Mistry. In other words, it is not obligatory to order promotion to the intermediate post before granting promotion to a higher post, it was held. The Bangalore Bench of the CAT in an identical matter, interfered with the reversion of a similarly placed ad hoc employee. Relying on the said decision of the Bangalore bench, the CAT allowed the OA and quashed the impugned orders.

3. The respondents in the OA have filed the present Writ Petition. According to them, the applicant could have been promoted on ad hoc basis only to the post of Worksmate and thereafter to the post of Permanent Way Mistry. So the promotion of the applicant to the post of Permanent Way Mistry should be taken as two ad hoc promotions notionally. Since only one ad hoc promotion is permissible, the petitioners correctly reverted him, it is submitted.

4. The rule, prohibiting two ad hoc promotions is contained in para 216A of the Indian Railway Establishment Manual. The relevant clause of the said Rule is Clause (iii), which reads as follows :

"In any case, no second ad hoc promotion shall be allowed."

If the respondent was initially promoted from the post of Khalasi to the post of Worksmate, then, he may not be eligible for ad hoc appointment to the post of Permanent Way Mistry. In this case, the promotion is directly ordered to the post of Permanent Way Mistry. Therefore, there is only one ad hoc promotion. So, the said rule cannot be pressed into service unless there is a bar against promoting a Khalasi to the post of Permanent Way Mistry. The CAT relied on a decision of the Bangalore Bench in OA No.425/95 rendered in identical

circumstances. We are of the view that the view taken by the CAT on the above quoted rule in its application to the facts of the case is a fair and reasonable view. At any rate, it is a plausible view. Therefore, we are not justified in interfering with the same under Article 226/227 of the Constitution of India. Accordingly, the Writ Petition fails and it is dismissed.

K.BALAKRISHNAN NAIR,JUDGE

23.10.2007 **T.R.RAMACHANDRAN NAIR, JUDGE**

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